

COMMONWEALTH OF KENTUCKY
BEFORE THE UTILITY REGULATORY COMMISSION

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In the Matter of:

THE INVESTIGATION OF RATES AND CHARGES)
ON JOHN TREITZ AND SONS) CASE NO. 7919

On July 24, 1980, this Commission ordered John Treitz and Sons to show cause as to the reasonableness of their rates and charges for operating certain facilities in connection with the treatment facilities of Highview Sewer District, Inc. (Highview"). On August 8, 1980, John Treitz and Sons issued a tariff setting forth the utility's rates and charges in accordance with our order in Case No. 7692, the record from said case having been ordered incorporated by reference into the record of this matter. This tariff showed that John Treitz and Sons was charging \$4,000 to each customer with two restrooms prior to tapping on to their collection line in order to recover construction costs. John Treitz and Sons also charged Highview \$270.00 per month rent for the use of the collection lines being used to transport sewage to Highview's lines and ultimately, to the treatment plant. Neither of these rates and charges had ever been approved by this Commission or its predecessor, the Public Service Commission. A hearing was held on August 8, 1980, at which Mr. Richard Treitz, partner in John Treitz and Sons and President of Highview, testified.

The reasonableness of the rental charge has since become a moot question because Highview is no longer paying the rental. John Treitz and Sons has ceased charging the monthly rental in anticipation of their being authorized to transfer all the lines which are rented to Highview and which this commission is authorizing by order in Case No. 7987. Thus, the sole issue remaining is the reasonableness of the \$4,000.00 contribution in aid of construction charged to each business connected to the collection lines owned by John Treitz and Sons.

BACKGROUND

Between 1966 and 1970, John Treitz and Sons developed a subdivision in Jefferson County known as Spring Mill. In addition to roads and other facilities, John Treitz and Sons constructed sewage collection lines throughout the subdivision. None of the eventual lot purchasers who built residences paid a contribution in aid of construction for their proportionate share of the cost of constructing the lines prior to their connection to the system.

Mr. Richard Treitz testified that the partnership anticipated MSD would purchase the system and therefore, they did not recover the construction costs through the sale of the lots or through contributions in aid of construction.

Mr. Treitz's testimony included an exhibit which was a newspaper clipping dated May 22, 1966, stating that MSD had been authorized to negotiate for the purchase of a private sewer treatment plant with the capacity to serve 1,307 homes and the collection system. The purchase referred to in the article never materialized and the Mr. Treitz testified that neither he nor his partner had ever discussed the possibility of an acquisition of John Treitz and Sons collection lines with representatives of MSD to date. Despite the fact that the collection system was not sold, John Treitz and Sons received \$36,000 in rental payments from Highview over the course of approximately eleven (11) years. Although the partnership could not produce a written lease evidencing the terms of the agreement, Highview's records showed that it was paying \$270.00 per month rent to John Treitz and Sons and because of the total amount shown as paid these payments probably began in 1969.

In 1969, John Treitz and Sons constructed a (8) eight-inch sewage collection line 1600 feet long that functioned as a collecting sewer for a number of the Spring Mill residential lots, but the main purpose of the route used to construct the line was to provide service to anticipated commercial customers across Fegenbush Lane. In 1970, John Treitz and Sons learned those commercial customers had been connected to Apple Valley Utility, a neighboring utility, so no further extension was added to the 1600-foot line. An Ashland Oil service station tapped-on near

the end of the 1600-foot line, but was not required to pay a contribution in aid of construction. John Treitz and Sons did not produce records from its books showing the cost incurred in building the 1600-foot line. Mr. Treitz submitted an estimate of the cost from Edward T. Davis, Vice-President, E-Z Construction Co., Inc. of \$46,000.00 dated February 4, 1980. However, Mr. Treitz admitted that Mr. Davis knew the reason Mr. Treitz wanted the estimate before it was calculated. Mr. Davis did not appear or testify concerning his estimate.

On August 22, 1977, John Treitz and Sons signed a contract with Pioneer-American Enterprises, Inc. ("Pioneer") which provided that a 400-foot sewage collection line (known as the "Prater addition") to be built by Pioneer would be transferred to John Treitz and Sons for \$10.00 in return for the line being connected about 100 feet from the end of the 1600-foot extension. Once the Prater addition was connected, John Treitz and Sons agreed to collect specified "tap-on" fees (or contributions in aid of construction) from each commercial lot owner ranging from \$4,000.00 to \$5,500.00 and to pay Pioneer a portion of those fees varying from \$800.00 to \$2,500.00 until a maximum amount of \$8,000.00 had been refunded to Pioneer. The contract further provided that Pioneer would not be entitled to any reimbursement if a particular lot-owner failed to tap-on to the line and pay the appropriate tap-on fee. Mr. Treitz testified that the Cox-Wolford lot and the Standard Oil lot will not be tapping-on leaving eight (8) lot owners to pay the fee. To date, John Treitz and Sons have collected \$15,500.00. John Treitz and Sons has already collected a total of \$6,000.00 from the owner of the Gibson-Pfannenschmidt property upon which a (5) five-unit office building has been constructed. John Treitz and Sons has demanded a separate \$4,000.00 contribution for each of the (5) five units occupied.

Mr. James H. Prater, President, Pioneer-American Enterprises, Inc., testified in Case No. 7692 that the cost of the 400-foot "Prater addition" was \$17,000.00. The E-Z Construction Company, Inc. actually constructed the line.

The Commission having reviewed the record, heard testimony and being advised, is of the opinion and FINDS:

1. That John Treitz and Sons developed Spring Mill and constructed the sewage collection lines in that subdivision between 1966 and 1970.

2. That John Treitz and Sons began construction of an (8) eight-inch collection line extending 1600 feet through Spring Mill to Fegenbush Lane in 1969 in order to serve some anticipated commercial customers.

3. That John Treitz and Sons discontinued further construction on the line in 1970 after learning that the prospective commercial customers had been served by a neighboring sewer utility instead.

4. That the 1600-foot line was and is being used to collect sewage from a number of residential customers in Spring Mill.

5. That none of the residential lot owners in Spring Mill paid a contribution in aid of construction before tapping-on to the sewer collection lines of John Treitz and Sons.

6. That Pioneer constructed the 400-foot "Prater addition" in 1977 in order to develop a new commercial area between Vaughn Mill Road and Fegenbush Lane, envisioning that the line could serve at least eight (8) lots.

7. That the "Prater addition" was transferred to John Treitz and Sons after its completion in return for John Treitz and Sons allowing the line to be connected to their 1600-foot line.

8. That according to an agreement dated August 22, 1977, John Treitz and Sons was to collect certain "tap-on" fees from lot owners as they connected to the "Prater addition" and refund a specified amount of those fees to Pioneer. The total amount to be refunded to Pioneer was not to exceed \$8,000.

9. That the "tap-on" fees are more appropriately termed contributions in aid of construction since the fee is used to defray the cost of the extension, not an individual connection.

10. That John Treitz and Sons has a zero basis in the "Prater addition" and that there is no reliable evidence as to the cost of the 1600-foot collection line constructed by John Treitz and Sons.

11. That this Commission has never authorized any of the rates and charges collected by John Treitz and Sons pursuant to the statutory procedure specified in KRS 278.190 and those sums previously collected have been collected illegally.

12. That the rates and charges proposed by John Treitz and Sons are excessive and are therefore, unfair, unjust and unreasonable.

13. That the maximum fee John Treitz and Sons should be allowed to charge is a \$1,000.00 contribution in aid of construction to each of the eight (8) lot-owners who can connect to the 400-foot "Prater addition."

14. That, in the event of a transfer of the Spring Hill sewage collection system to Highview, including the 1600-foot extension and the 400-foot "Prater addition," Highview should be authorized to charge the \$1,000.00 contribution and pay the sums collected directly to Pioneer.

15. That the difference between fees previously paid to John Treitz and Sons and \$1,000.00 should be refunded to those who paid the excessive fees within thirty (30) days from the date of this order.

Based upon the above-stated findings, it is therefore ORDERED that John Treitz and Sons is hereby authorized to charge a contribution in aid of construction of \$1,000.00 to each of (8) eight lot-owners which connect to the "Prater addition."

IT IS FURTHER ORDERED That in the event of a transfer of the Spring Hill sewage collection lines to Highview, including the 1600-foot extension and the 400-foot "Prater addition," Highview is hereby authorized to charge the \$1,000.00 contribution and pay the sums collected directly to Pioneer.

IT IS FURTHER ORDERED That John Treitz and Sons refund the difference between the amount of the fees previously paid and \$1,000.00 to those lot-owners who paid them within thirty (30) days of the date of this order.

IT IS FURTHER ORDERED That John Treitz and Sons file with the Commission a statement showing the amount of each refund and

the person to whom it was paid within forty-five (45) days of
the date of this order.

Done at Frankfort, Kentucky, this 20th day of February, 1981.

UTILITY REGULATORY COMMISSION

Did not participate
Chairman

James H. Egan
Vice Chairman

Mary Kay Oken
Commissioner

ATTEST:

Secretary